

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6337

BILL NUMBER: HB 1272

NOTE PREPARED: Dec 30, 2008

BILL AMENDED:

SUBJECT: Illegal Immigration.

FIRST AUTHOR: Rep. Pelath

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☒ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill requires: (1) the Department of Workforce Development to determine and file an annual report on the number, industries of employment, and wage rates of unauthorized aliens; and (2) public employers and public contractors to use E-Verify to verify the work eligibility status of all newly hired employees.

The bill requires the Department of Correction to: (1) evaluate the citizenship and immigration status of a committed offender; and (2) notify and work with the United States Department of Homeland Security to deport offenders who are in the United States unlawfully.

The bill also requires the Attorney General to: (1) verify quarterly whether an order has been issued or a criminal penalty has been imposed under a federal law regarding the employment of unauthorized aliens against a person or other entity doing business in Indiana; and (2) order the appropriate agencies to permanently revoke all licenses held by a person or entity who has had an order issued or a criminal penalty imposed against the person or entity.

Penalty Provision: This bill provides that: (1) a person who counterfeits or falsely reproduces a driver's license with intent to use the license or to permit another person to use the license commits a Class D felony (instead of a Class B misdemeanor); and (2) a person who knowingly or intentionally produces or distributes a document that is not issued by a government entity and that purports to be a government-issued identification commits a Class C felony (instead of a Class A misdemeanor). The bill also makes making or distributing a forged instrument a Class B felony.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Department of Workforce Development (DWD):* This bill requires DWD to file an annual report with Legislative Council regarding the number of unauthorized aliens residing in Indiana, industries that employ unauthorized aliens, and their respective wage rates. DWD estimates they will require an increase in personnel and resources to perform the necessary audits required by the legislation. Assuming that DWD randomly audits businesses to ensure compliance with this legislation, they estimate requiring an additional \$700,000 per year to perform the necessary audits.

The funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. [DWD reverted \$128,000 to the General Fund at the end of FY 2008.]

Public Employer and Public Contractor Provision: This legislation affects public employers as well as state contracting agencies by requiring state agencies to verify the work eligibility status of all employees hired. The bill also limits public contracting by requiring that a contractor or subcontractor use the E-Verify system as a condition of receiving a contract award. Requiring contracted employers to use verification systems may increase state expenditures on contracts if submitted requests for proposal cost estimates increase to reflect any change in hiring practices and/or wages paid by contractors. Increases in contracting expenses to the state are indeterminable.

The E-Verify program is a free Internet-based system that allows employers and state agencies to verify the legal working status of new hires in seconds. Requiring state agencies and state contractors to use the E-Verify system will not increase state expenses, but will slightly increase workload to ensure that all employees hired after the effective date are processed through the system. Increases in workload are expected to be minimal due to the processing time necessary for requests.

Indiana Department of Correction (DOC): The bill requires that DOC staff to verify the legal presence of all individuals incarcerated in DOC facilities and contact the U.S. Department of Homeland Security if DOC is unable to verify an individual's citizenship status. Additionally, the bill requires DOC to work with the U.S. Department of Homeland Security in deporting committed offenders who are unlawfully present in the United States. This bill will increase the workload of DOC in order to work with the U.S. Department of Homeland Security to deport criminal unauthorized aliens.

Currently, DOC verifies the legal status of offenders committed to their facilities by asking them an extensive list of questions in interview format. This is done in part to apply for expense reimbursement under the State Criminal Alien Assistance Program (SCAAP). DOC reports that they currently notify the U.S. Immigration and Customs Enforcement (ICE) and the U.S. Social Security Administration (SSA) when a determination has been made that an offender is illegally present in the United States.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. [DOC reverted \$261,000 to the General Fund at the

end of FY 2008.]

Indiana Office of the Attorney General (AG): The bill also requires that the AG determine quarterly if any businesses or persons that operate a business have any criminal penalties imposed against them for employing unauthorized aliens. If any individual or business is determined to have penalties imposed against them, the AG is required to order the appropriate agency to permanently revoke all business licenses held by the person or entity. The AG reports that this bill will require additional funding. The cost estimate provided by the AG ranges from approximately \$100,000 to over \$1 M per fiscal year, depending upon implementation requirements, to enforce the provisions of the bill.

Penalty Provision: The bill does the following regarding criminal penalties: (1) the bill increases the penalty for counterfeiting or falsely reproducing a driver's license from a Class B misdemeanor to a Class D felony, (2) the bill adds a new criminal penalty of a Class B felony for knowingly or intentionally making more than one written instrument that falsely purports to have been made by someone else, and (3) the bill also adds that a person who knowingly or intentionally produces falsified government-issued identification commits a Class C felony.

State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$69,223. The average expenditure to house an adult offender was \$20,287 in FY 2008.(This does not include the cost of new construction.)

A Class D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor. The period of incarceration will depend upon mitigating and aggravating circumstances. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances. The average length of stay in DOC facilities for all Class C felony offenders is approximately two years.

A Class B felony is punishable by a prison term ranging from 6 to 20 years, depending upon mitigating and aggravating circumstances. The average length of stay in DOC facilities for all Class B felony offenders is approximately 3.7 years.

Explanation of State Revenues: *Penalty Provision:* More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. The maximum fine for a Class B misdemeanor is \$1,000, the maximum fine for a Class B or Class D felony is \$10,000. Court fees for both misdemeanors and felonies are the same.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Political Subdivision Application:* This bill also impacts the hiring practices and contracting of work for local units of government. Local expenditures and workload will increase depending on the following: (1) current use of E-Verify by local units of government, (2) individuals hired by local units of government after the effective date, and (3) use of contracted work after the effective date. Additionally, the same cost increases for requests for proposal may be experienced as discussed in the *Explanation of State Expenditures*. Actual increases to local expenditures is indeterminable.

Penalty Provision: If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. The maximum term of imprisonment for a Class B misdemeanor is up to 180 days. Additionally, if more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Penalty Provision:* Court fees for both misdemeanors and felonies are the same, so increasing the penalty for counterfeiting and false reproductions of driver's licenses will bear no additional revenue at the local level. However, for the provisions that create new penalties, if additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: All state agencies.

Local Agencies Affected: Potentially all local units.

Information Sources: Indiana Sheriffs' Association; DOC; Matt Light, Office of the AG; John Ruckelshaus, III, DWD.

Fiscal Analyst: Bill Brumbach, 232-9559.